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SUBJECT: Guangdong Labor Law Guidelines - Good News and Bad for U.S.
Firms

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11. (SBU) Summary: There's good news and bad news for U.S. firms in Guangdong's new implementation guidelines for the Labor Contract Law and Labor Mediation and Arbitration Law, according to HR executives at U.S. companies with major operations in the province. On the plus side, the guidelines confirmed that certain aspects of the laws -- including those related to claims for social security benefits and consultation with employees on employment practices -- would not be applied retroactively. On the down side, some firms are frustrated that the burden of proof will fall on them in certain overtime disputes. Still in need of clarification are regulations for outsourced labor and conditions for flexible working schedules. Nevertheless, U.S. firms emphasize that the impact of the new laws on their labor practices is relatively small. Echoing comments we've heard frequently, HR executives said the new laws would have a much greater impact on smaller firms in the Pearl River Delta whose practices did not meet international standards. End summary.

Good News: Social Security, Housing, Existing Policies

12. (SBU) U.S. firms in south China got some good news as long-awaited guidance on implementation of the new Labor Contract Law and Labor Arbitration and Mediation Law began to emerge from the Guangdong High Court and the Guangdong Labor Dispute Arbitration Commission (reftel). Ivy Long, HR manager for AVON, told us that further clarification provided by the Guangdong guidelines was a positive step. Several of the guidelines will benefit AVON, including stipulation that the courts will not recognize claims for social security benefits required under the new law for any work that preceded the law's implementation on January 1, 2008. In addition, AVON was pleased the guidelines confirmed that disputes over housing fund benefits would not be considered labor disputes.

13. (SBU) Clara Wang, Senior Human Resource (HR) Director for Wal-Mart China, explained that the new guidelines confirmed the company's 10-year-old employment policies at its Guangdong stores were not invalidated by the new law. The law requires that a firm must discuss new benefits policies or changes to existing policies with workers and secure their approval. Because Wal-Mart had never consulted with workers on its employment policies, it feared the new law would make them invalid, according to Wang. The Guangdong guidelines confirm that the law was not retroactive in this regard; as long as the existing policies are not otherwise illegal and have been disclosed to workers, they remain valid. However, Wang expressed concern that the Guangdong guidelines could be superseded

by national implementation regulations expected soon.

Bad News: Overtime and Appeals

14. (SBU) Several U.S. firms were frustrated by confirmation that the burden of proof would fall on the employer in certain overtime disputes. If the employee claims overtime pay for work that the employer says was not performed, the burden of proof is on the employer to show that the overtime work did not take place. Daniel Mo, HR director of Wrigley Confectionary (China), emphasized the additional costs that employers would have to bear to more closely monitor and track employee time and attendance. He complained that if the national implementation regulations don't offer any relief, Wrigley may have to overhaul its time-keeping system to require employees to carefully document the hours they work each week. However, Ivy Long, HR manager at AVON, explained that her firm already had such a system in place and its employment contracts specified that no overtime compensation would be paid unless the work is documented on a signed time sheet.

15. (SBU) In addition, Wal-Mart's Wang complained about new guidelines that labor dispute arbitration decisions made at the local level would be final in certain cases. She claimed that Wal-Mart frequently loses cases involving employee theft and fraud at the local level because local-level judges often view the company as "too harsh" towards its employees. The chances for Wal-Mart to obtain a fair hearing, she said, are better in higher level courts.

Still Unclear: Outsourcing, Disputes, Flex-time

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16. (SBU) HR managers at AVON and Wrigley both pointed out the need for further clarification on rules for outsourcing labor. Both firms rely heavily on temporary workers employed by HR outsourcing companies. AVON's Long and Wrigley's Mo both argued that the maximum duration allowed under the new law for employing outsourced labor -- six months -- was too short. They hope that national implementation regulations or additional guidance from local officials will offer some relief and permit them to employ such workers for longer periods under certain conditions. Otherwise, they will have to expand their permanent workforce at considerable cost.

17. (SBU) Long also pointed out that there is a need for more guidance on resolving disputed benefits policies. The law requires firms to obtain concurrence from workers before implementing new employment policies, but does not offer enough guidance on how to resolve disputes when management and the union can't agree. She said that when she sought input from the Guangdong Labor Department and the Guangdong High Court on this question, the two agencies gave her different answers. The Labor Department said the company was the final decision maker, while the High Court said all new policies concerning employee benefits are illegal unless approved by the union.

18. (SBU) Wang commented that Wal-Mart hopes for further clarification of overtime standards that will make it easier to continue using flexible work schedules. She said this was particularly important for their distribution centers, which are much busier during peak shopping seasons. Tony Lowe, Labor Standards Audit Manager for Disney, on the other hand, told us that his firm had government approval to use flexible work schedules and the new law's overtime standards were not a problem.

Small Impact on U.S. Firms

19. (SBU) Despite complaints about particular elements of the new laws and guidelines, there was broad agreement among HR executives that they will not have much negative impact on U.S. firms in south China. Disney's Lowe described careful consultation with attorneys and local labor officials to ensure that the firm was in compliance in advance of the laws' implementation. Wang pointed out that

Wal-Mart's practices had already been consistent with the new laws and in many cases offered benefits and protections that exceeded the new requirements. Echoing comments we've heard frequently, AVON's Long said the new laws would have a much greater impact on smaller firms in the Pearl River Delta whose practices did not meet international standards. Those firms will either have to bear substantial costs to comply or run the risk of litigation and sanctions by carrying on business as usual.

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